

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**VS.**

**ANTOINE L. HATTEN,**

**Defendant.**

**CASE NO. 8:07CR47**

# MEMORANDUM AND ORDER

This matter is before the Court on Defendant Antoine Hatten’s Motion to Set Aside Judgment – Lack of Jurisdiction (Fed.R.Civ.P. 60(b)(4)) (Filing No. 120), wherein Defendant seeks an order vacating the judgment of conviction for Count II of the Superseding Indictment.<sup>1</sup> Defendant argues that this Court lacked subject matter jurisdiction to enter judgment, and therefore the judgment of conviction for Count II is void. (*Id.* at 1.)

Defendant brings the instant motion pursuant to Rule 60(b)(4) of the Federal Rules of Civil Procedure. However, Rule 60(b) “applies only to civil cases.” *United States v. Eggleston*, 24 F. App’x 656 (8th Cir. 2002) (unpublished per curiam); see also *United States v. Mosavi*, 138 F.3d 1365, 1366 (11th Cir. 1998) (“Rule 60(b) simply does not provide for relief from judgment in a criminal case . . . .”). As Rule 60(b) of the Federal Rules of Civil Procedure does not provide the relief Defendant seeks, his motion will be denied.

<sup>1</sup> On June 27, 2007, Defendant entered a plea of guilty before Magistrate Judge F. A. Gossett on Counts I, II, IV, and V of the Superseding Indictment, possession with intent to distribute 50 grams or more of crack cocaine, possession of a firearm during a drug trafficking crime, and two forfeiture counts, respectively. (Filing No. 53.) On August 2, 2007, the Court adopted Judge Gossett's recommendation to accept Defendant's plea of guilty, accepted the plea, and found Defendant guilty. (Filing No. 65.)

The Court normally would be inclined to construe the instant motion as one seeking relief pursuant to 28 U.S.C. § 2255. However, Defendant states that 28 U.S.C. § 2255 is “both inadequate and ineffective for this Defendant.” (Filing No. 120 at 7.) Accordingly, the Court finds that Defendant has indicated that he does not want the motion to be construed as a motion pursuant to 28 U.S.C. § 2255, and therefore the Court will not so construe it.

For the above stated reasons,

IT IS ORDERED:

1. Defendant Antoine Hatten’s Motion to Set Aside Judgment – Lack of Jurisdiction (Fed.R.Civ.P. 60(b)(4)) (Filing No. 120) is denied; and
2. The Clerk shall mail a copy of this Memorandum and Order to Defendant at his last known address.

DATED this 16<sup>th</sup> day of January, 2013.

BY THE COURT:

s/Laurie Smith Camp  
Chief United States District Judge